No. 80-1340

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

The Honorable RICHARD D. LAMM, Governor of the State of Colorado: JAMES G. RICKETTS, Executive Director of the Colorado Department of Corrections; JOHN PERKO, Director of Adult Services of the Colorado Department of Corrections; EDGAR FOX, Director of the Division of Correctional Industries of the Colorado Department of Corrections; and WILLIAM WILSON, Superintendent of the Canon Correctional Facility,

Petitioners,

vs.

FIDEL RAMOS, DAVID LEE ANDERSON, SADIKI LISIMBA AJAMU, (a/k/a Eugene Collins), ALEXANDER ROSES, MARK J. MENCHETTI, and LESTER LASENBY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF PETITIONER, AMICUS CURIAE

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BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF PETITIONER, AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The State of Tennessee operates a system of correctional facilities. Since 1975, officials of the State of Tennessee have been invovled in "totality of conditions" class action litigation concerning conditions in its correctional facilities. This litigation, premised on federal and state constitutional provisions

and state statutory provisions, is being presecuted before the state courts of Tennessee. Presently this state case is before the Tennessee Supreme Court. *See Trigg* v. *Alexander,* No. A-6047-I (Davidson County Chancery), *permission to appeal granted,* No. 81-2-I (Tenn. Jan. 12, 1981).

During the period of this litigation, and partially in response to the issues raised in it, the State of Tennessee has undertaken a major program of reform and renovation in its prison system. The experience of Colorado described in its petition for certiorari bears a great resemblance to the process which has occurred in Tennessee. *See* pet. at pp. 2-4.

During the appellate stage of the state court litigation, the United States District Court for the Middle District of Tennessee, L. Clure Morton, Ch. J., filed and consolidated five complaints filed under 42 U.S.C. § 1983 by state prisoners confined in one of the facilities involved in the state court litigation. *See Dixon v. Bradley,* Nos. 80-3578, 80-3404, 80-3581, 80-3616, and 80-3617 (M.D. Tenn., complaints filed Oct. 24, 1980 and Oct. 29, 1980). In his order consolidating these actions, Judge Morton characterized them as "challenging the constitutionality of conditions of confinement in the Tennessee State Penitentiary." *Dixon* v. *Bradley,* No. 80-3578 (M.D. Tenn., Oct. 24, 1980) (order directing filing in forma pauperis, consolidating cases and appointing counsel).

Given these developments, the State of Tennessee has an active interest in the outcome of the present litigation in this Court. This brief will only address the first issue (abstention) raised by the petition for certiorari. Since this brief is filed on behalf of a State sponsored by its attorney general, consent to its filing is not required. *See* Sup. Ct.R. 36(4).

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

I.

The Court Of Appeals Has Decided In This Case An Important Question Of Federal Law Which Has Not Been, But Should Be, Settled By This Court.

Over the last few years, "this Court has in several decisions considered constitutional challenges to prison conditions or practices by convicted prisoners. (cites omitted)." *Bell* v. *Wolfish,* 441 U.S. 520, 523 (1979). In the course of these decisions, this Court has shown great concern for the constitutional rights of those incarcerated in prison. At the same time, this Court has repeatedly recognized that the administration of a prison is a difficult and complex task. This Court has characterized the balancing of these propositions in the following language.

> "There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene." *Johnson* v. *Avery,* 393 U.S. 483, 486 (1969).
>
> "Federal Courts sit not to supervise prisons but to enforce the constitutional rights of all "persons," including prisoners. We are not mindful that prison officials must be accorded latitude in the administration of prison affairs, and that prisoners necessarily are subject to appropriate rules and regulations." *Cruz* v. *Beto,* 405 U.S. 319, 321 (1972).
>
> "Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these

considerations, courts should ordinarily defer to their expert judgment in such matters." *Pell* v. *Procunier,* 417 U.S. 817, 827 (1974).

"The federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the states." *Meachum* v. *Fano,* 427 U.S. 215, 229 (1976).

"Because the realities of running a penal institution are complex and difficult, we have also recognized the wide-ranging deferance to be accorded the decisions of prison administrators." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.,* 433 U.S. 119, 126 (1977).

"As we explained in [cite omitted], state and local authorities have primary responsibility for curing constitutional violations." *Hutto* v. *Finney,* 437 U.S. 678, 688 at n. 9 (1978).

"Finally, as the Court of Appeals correctly acknowledged, the problems that arise in day to-day operation of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Bell* v. *Wolfish,* 441 U.S. 520, 547 (1979).

See, also, the statement of this Court in *Preiser* v. *Rodiguez,* 411 U.S. 475, 491-492 (1973), found on pp. 6 and 7 of the petition for certiorari.

From these statements, two bases for the Court's position of restraint can be ascertained. The first is a realization of the complexities of prison administration. The second is an appreciation for the limitations imposed by federalism and comity when a federal court is involved in matters of state administration.

These two bases were perhaps most succinctly stated together in *Procunier* v. *Martinez,* 416 U.S. 396 (1974), when the Court stated the following.

> "For all of these reasons, courts are illequipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal instituions are involved, federal courts have a further reason for deference to the appropriate prison authorities." *Procunier* v. *Martinez,* 416 U.S. 396, 405 (1974).

During the same period of time that this Court was deciding these prison condition cases, it was also deciding a number of cases clarifying when the use of the doctrine of abstention is appropriate or necessary. *See,* e.g., *Colorado River Water Conservation District* v. *United States.* 424 U.S. 800 (1976). *See,* also, cases compiled at footnote 4 of the petition for certiorari.

A review of these cases shows that the doctrine of abstention is based upon the same two foundations [a realization of the complexity of certain matters, *see, e.g., Burford* v. *Sun Oil Company,* 319 U.S. 315 (1943), and an appreciation for the problems of comity in our federal system, *see, e.g., Younger* v. *Harris,* 401 U.S. 37 (1971), *Railroad Commission of Texas* v. *Pullman Company,* 312 U.S. 496 (1941)] as the doctrine of restraint in the prison matters. Thus, the same considerations are present when a federal court addresses a prison condition law suit as when it addresses a matter of abstention. However, except in the first amendment area[1], this Court has not addressed the relationship of these doctrines. The present case presents a reasonable vehicle for the court to address this very timely and important question. Therefore, the State of Tennessee would urge that the petition for certiorari be granted.

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[1] *See, Procunier* v. *Martinez,* 416 U.S. 396 (1974).

II.

The Court Of Appeals Has Decided In This Case A Federal Question In A Way In Conflict With Applicable Decisions Of This Court.

The Court of Appeals discussed the doctrine of abstention at some length. However, it did so in a narrow, restricted manner that both limited conceptually the doctrine of abstention and overlooked an important aspect of this doctrine.[2]

The Court of Appeals followed the exposition of the doctrine of abstention as it was out in *Colorado River Water Conservation District* v. *United States,* 424 U.S. 800 (1976). In doing so, it addressed each of the three categories of abstention considered in Section III B of that opinion. *Ramos* v. *Lamm,* No. 79-2324, Slip opinion at pp. 5-12 (10th Cir. Sept. 25, 1980). However, in addressing only the three categories of abstention specifically mentioned in *Colorado River,* the Court of Appeals failed to give the proper breath both to the conceptual undertaking in *Colorado River* and to its precise holding.

The Court of Appeals found that abstention in this case was not proper under the "Pullman" doctrine. *See Railroad Commissioner of Texas* v. *Pullman Company,* 312 U.S. 496 (1941). *Ramos* v. *Lamm, supra* at pp. 8-9. In the same manner, it found that abstention was not proper under the "Sun Oil" line of cases. *See Burford* v. *Sun Oil Company,* 319 U.S. 315 (1943). *Ramos* v. *Lamm, supra* at pp. 9-10. Finally it determined that abstention was not proper under the "Younger" line of cases.

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[2]It has been argued above that this Court has never addressed the proper application of the doctrine of abstention to a prison conditions law suit. This portion of the argument does not retract that assertion. Rather, the thrust of the present argument is that the Court of Appeals incorrectly applied the doctrine of abstention, irrespective of its context.

See, Younger v. *Harris,* 401 U.S. 37 (1971). *Ramos* v. *Lamm, supra,* at pp. 10-12. Having surveyed the applicability of these cases, the Court of Appeals ended its consideration.

In so doing, it overlooked both the thrust of the *Colorado River* decision and its precise holding. As to the thrust of the *Colorado River* decision, it suffices to mention that this decision and the ones from this Court that have followed it have increasingly seen abstention as an interrelated group of doctrines. Therefore, a precise classification of them and a restriction of their applicability to narrow factual situations must, of necessity, lead a court to an incorrect result in many cases. The State of Tennessee would argue that this is what has occurred in the present case.

More concretely, the Court of Appeals overlooked the precise decision in *Colorado River.* This Court in that case rejected abstention on each of the grounds listed above. However, it held that abstention in the case was proper under what has become to be known as a fourth doctrine of abstention.[3] *Colorado River* held that while, as a general rule, the pendency of a state court action is not a bar to federal court jurisdiction, there are certain exceptional circumstances in which this pendency is a bar. *Colorado River, supra.* at 817. In the present case, the Court of Appeals did not address the applicability of this sec-

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[3]The ground of the decision in *Colorado River* has been characterized as "a fourth type of abstention", 17 Wright Miller, and Cooper, *Federal Practice and Procedure,* § 4247 at p. 502, a principal of "wise judicial administration", *Colorado River, supra* at 817, or an extension of the *Younger* line of abstention cases, cf. *Juidice* v. *Vail,* 430 U.S. 327 (1977). However characterized, this doctrine has been approved by this Court. This brief will, for purposes of simplicity, consider the doctrine one of abstention.

tion of the *Colorado River* opinion,[4] even though the Court of Appeals did recognize that there were "pending actions in the state court with a number of similar claims, in which the plaintiff class might have intervened." *Ramos* v. *Lamm, supra,* at p. 10. According to the petition for certiorari, at least one such pending law suit was a class action in which the plaintiffs in the present case could have litigated their grievances. Petition for certiorari at p. 5, note 2.

The State of Colorado has argued, and the State of Tennessee agrees, that, given this situation, abstention was required under the aspect of the abstention doctrine described in *Juidice* v. *Vail,* 430 U.S. 327 (1977). However, at minimum, consideration should have been given by the Court of Appeals to this circumstance as bearing upon abstention under *Colorado River.* This was not done. Since this was not done, and since this case clearly seems to be one of those which might present the exceptional circumstances required for abstention under *Colorado River,* the State of Tennessee urges this Court to grant the writ of certiorari to consider this question.

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[4]A phrase from this section of the *Colorado River* opinion was quoted in the Court of Appeals opinion. *Ramos* v. *Lamm, supra,* at p. 10. However, the context of this quote shows that the court was only considering it as bearing on the question of whether injunctive relief was being sought against the state court proceeding. Therefore, while the language is mentioned by the court, the reasoning is not.

CONCLUSION

For the reasons stated, the State of Tennessee, amicus curiae, urges that the writ of certiorari issue to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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